

17 May 1987

Reagan's Defenders Arguing He Can Defy Congress's Ban

By STUART TAYLOR Jr.

Special to The New York Times

WASHINGTON, May 16 — As evidence accumulates that President Reagan was active in getting aid for the Nicaraguan rebels from foreign nations and private donors, his defenders began arguing this week that Mr. Reagan has sweeping power to disregard legislation barring such Government aid.

The apparent objective is to head off charges that the President may have led a conspiracy to violate the Boland Amendment, which prohibited all Government aid to the rebels, known as contras, from October 1984 to October 1985 and military aid the next year.

First, some White House officials and Republicans in Congress contended this week, the Boland Amendment's ban on "direct or indirect" aid to the contras by "any agency or entity involved in intelligence activities" did not apply to the President or his National Security Council.

Second, they have suggested, if these restrictions were interpreted to apply to the President or his National Security Council staff, they might be unconstitutional.

Many in Congress Disagree

The first argument is contrary to the views of many in Congress and others. Robert C. McFarlane, who was the President's national security adviser until late 1985, said in testimony this week before Congress that he had always understood that the legislation applied to the National Security Council.

The second argument, on far-reaching constitutional grounds, was strongly disputed by leading constitutional experts. They included Professor Laurence H. Tribe of Harvard Law School and Lloyd N. Cutler, a Washington lawyer who was President Carter's legal counsel.

While reserving judgment on whether the President was guilty of any illegality, these experts dismissed as fallacious the argument by Sen. Orrin G. Hatch, Republican of Utah, and others that the President is "the sole person to whom our Constitution gives the responsibility for conducting foreign relations."

"That's clearly wrong," Mr. Cutler said. "Contrary to popular belief, the powers are not separated in the foreign policy-national security area; they are shared for the most part, and neither Congress nor the President can do much without the other."

A Meeting With Saudi

The legal contentions by President Reagan's defenders were brought on in part by disclosures this week that he had personally thanked King Fahd at a private meeting in February 1985 for promising to double Saudi Arabia's prior gifts of \$8 million for the contras.

The month after President Reagan's meeting with King Fahd, Assistant Sec-

retary of State Langhorne A. Motley assured Congress at a hearing that the Boland Amendment clearly prohibited asking foreign countries to help the contras, and that the Administration would honor the prohibition.

President Reagan's statement Friday that he had been "very definitely involved" in seeking private American aid for the contras sharpened the debate.

Senator Hatch, in an interview, said efforts by Congress to "dictate terms and conditions of foreign policy" to the President were "an unconstitutional encroachment on the Presidential prerogatives and power."

And Senator Warren B. Rudman, Republican of New Hampshire, said the President cannot "be precluded by any amendment of the Congress from dealing with foreign countries in any way he wishes."

But Professor Tribe, author of a widely cited treatise on constitutional law, said Congress clearly had considerable power to curb the President's governmental dealings with foreign countries, although perhaps not his expression of his own personal views to them. Mr. Cutler agreed.

No 'Royal Prerogative'

While noting that "the President's power is at its peak when he is dealing one on one with the head of a foreign state," Mr. Tribe stressed that even in that context, Congress could bar the President from using government property, his own aides, or "the institutional apparatus of the executive branch" to pursue policies Congress has rejected.

"The framers were unwilling to give the President anything resembling royal prerogative," he said.

The Constitution established a major role for Congress in foreign affairs by giving it the power of the purse and the powers "to regulate commerce with foreign nations," to declare war, and to raise and support armed forces.

And while the Constitution makes the President the chief formulator of foreign policy and the nation's representative in dealings with foreign governments, it places explicit curbs on him.

One provision states that "no money shall be drawn from the Treasury, but in consequence of appropriations made by law." Another says that "no person holding any office of profit or trust" in the Government "shall, without the consent of Congress, accept of any present" of any kind from "any King, Prince or foreign state."

The White House arguments that the Boland Amendment did not apply to the President, while disputed by some outside legal experts, were generally viewed as more plausible than the contention that imposition of such restrictions on the President would be unconstitutional.